

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

MARC VEASEY, ET AL.,)	CASE NO: 2:13-CV-00193
)	
Plaintiffs,)	CIVIL
)	
vs.)	Corpus Christi, Texas
)	
RICK PERRY, ET AL.,)	Wednesday, August 10, 2016
)	
Defendants.)	(8:33 a.m. to 9:40 a .m.)

TELEPHONIC STATUS CONFERENCE

BEFORE THE HONORABLE NELVA GONZALES RAMOS,
UNITED STATES DISTRICT JUDGE

Appearances:	See Next Page
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Corpus Christi, Texas; Wednesday, August 10, 2016; 8:33 a.m.

(Telephonic Conference)

(Call to Order)

THE COURT: The Court calls Cause Number 2:13-CV-291, Veasey, et al v. State of Texas. I'm going to have Brandy call roll.

THE CLERK: For Veasey/LULAC:

Mr. Dunn?

MR. DUNN: I'm here. Good morning.

THE CLERK: Mr. Derfner.

MR. DERFNER: Here.

THE CLERK: Ms. Lang?

MS. LANG: Good morning.

THE CLERK: Mr. Hebert?

MR. HEBERT: Yes, your Honor.

THE CLERK: Ms. Baron -- Mr. Baron?

MR. BARON: Mr. Baron.

THE CLERK: I'm sorry.

MR. BARON: Yes, present.

THE CLERK: Ms. Kamin?

MS. KAMIN: Yes, your Honor.

THE CLERK: For Texas NAACP:

Ms. Perez?

MS. PEREZ: Yes, ma'am, I'm here.

THE CLERK: Ms. Cohan?

1 **MS. COHAN:** Yes, ma'am.

2 **THE CLERK:** Mr. Downes?

3 **MR. DOWNES:** Yes, ma'am.

4 **THE CLERK:** Mr. Rosenberg?

5 **MR. ROSENBERG:** Yes, ma'am. Good morning.

6 **THE CLERK:** Mr. Goode?

7 **MR. GOODE:** Yes, ma'am.

8 **THE CLERK:** Ms. Clark?

9 **MS. CLARK:** Yes, I am here.

10 **THE CLERK:** Thank you.

11 For Taylor Plaintiffs:

12 Ms. Van Dalen?

13 **MS. VAN DALEN:** Yes, ma'am. Good morning.

14 **THE CLERK:** Mr. Garza?

15 **MR. GARZA:** Yes, ma'am.

16 **THE CLERK:** For the Association of Judges:

17 Mr. Rios?

18 **MR. RIOS:** Yes, ma'am.

19 **THE CLERK:** For the League of Young Voters:

20 Mr. Ross?

21 **MR. ROSS:** Yes, ma'am.

22 **THE CLERK:** Ms. Faransso?

23 **MS. FARANSSO:** Yes, ma'am.

24 **THE CLERK:** Ms. Aden?

25 **MS. ADEN:** Good morning.

1 **THE CLERK:** For the United States:

2 Mr. Shapiro?

3 **MR. SHAPIRO:** Yes, ma'am. Good morning.

4 **THE CLERK:** Ms. Bell-Platts?

5 **MS. BELL-PLATTS:** Good morning.

6 **THE CLERK:** Mr. Smith?

7 **MR. SMITH:** Good morning, Judge.

8 **THE CLERK:** Mr. Olikier?

9 **MR. OLIKER:** Yes, ma'am.

10 **THE CLERK:** Ms. Wake?

11 **MS. WAKE:** Yes, ma'am.

12 **THE CLERK:** Mr. Herren?

13 **MR. HERREN:** Yes, ma'am.

14 **THE CLERK:** Mr. Gear?

15 **MR. GEAR:** Yes, ma'am.

16 **THE CLERK:** And then for the State of Texas:

17 Ms. Colmenero?

18 **MS. COLMENERO:** Yes, ma'am.

19 **THE CLERK:** And Mr. Frederick?

20 **MR. FREDERICK:** Yes, ma'am.

21 **THE CLERK:** Thank you.

22 **THE COURT:** All right. Good morning, Counsel. This
23 hearing has been set to address the plan for interim relief for
24 the November 2016 elections and this Court had ordered you all
25 to confer to determine what terms of the plan might be agreed

1 to and you all have now filed a Joint Submission of Agreed
2 Terms.

3 So first, any comments or anything on the joint
4 submission from the Veasey Plaintiffs?

5 **MR. DUNN:** Good morning, your Honor. This is Chad
6 Dunn. I'm not sure, obviously we believe we have reached
7 agreement with the State in terms of what's provided for in the
8 agreed terms. There are some collateral issues that have been
9 raised in other filings --

10 **THE COURT:** Right.

11 **MR. DUNN:** -- if that's what your Honor is asking
12 about now, or --

13 **THE COURT:** No, I'll address those shortly. I just
14 didn't know, is there anything else on the joint submission? I
15 mean it's all set out there. I didn't know if you all wanted
16 to tell me anything else. But, no, don't feel like you have to
17 say anything. We will get to the additional terms shortly.
18 So --

19 **MR. DUNN:** Nothing more to add for us, the Veasey
20 Plaintiffs, on agreed terms.

21 **THE COURT:** All right. Any of the other Plaintiffs?

22 **(No audible response)**

23 And the Defense then.

24 **UNIDENTIFIED SPEAKER:** (Indiscernible)

25 **THE COURT:** Okay, I'll take that as a no, unless you

1 speak up from everyone.

2 What about from the State of Texas, Ms. Colmenero?

3 **MS. COLMENERO:** Yes, your Honor. I think there's
4 just a slight modification to the Declaration. The parties
5 filed a slightly modified Declaration with the Joint Motion for
6 Entry of the Temporary Remedial Order and I think we can file
7 an updated version of that Declaration as part of the Joint
8 Submission of Agreed Terms.

9 **THE COURT:** Okay. Is that right, Mr. Dunn?

10 **MR. DUNN:** Yes. Just to clarify for the Court, there
11 was just a mistake that we made in the drafting. This isn't
12 the issue of the additional --

13 **THE COURT:** Right.

14 **MR. DUNN:** -- sentence the State is asking about,
15 correct?

16 **THE COURT:** Okay, so --

17 **MR. DUNN:** But, yes, we agree to that.

18 **THE COURT:** And Ms. Perez?

19 **MS. PEREZ:** Oh, our position is the same, your Honor.

20 **THE COURT:** All right. And I'm assuming for everyone
21 else, unless you speak up.

22 So if someone will file that shortly with the Court,
23 the updated version. And if nothing further then on the joint
24 submission, the Court will approve the agreed terms.

25 And I just want to take a minute to thank you all. I

1 know you all spent a lot of time and effort put into the
2 conferring process in reaching an agreement, so the Court
3 sincerely appreciates that.

4 So let's move on to the submission of additional
5 terms. I guess, Mr. Dunn, are you taking the lead here for the
6 Private Plaintiffs and the Intervenor Plaintiffs?

7 **MR. DUNN:** Well, to a certain degree. So it seems to
8 me that there is an additional term that the Plaintiffs are
9 asking for as it relates to training and education and then
10 there are three additional terms that the State is asking for.
11 If you want to start with -- if your Honor wants to start with
12 the Plaintiffs' suggested additional educational terms, then
13 Ms. Myrna Perez is going to argue that for us.

14 **THE COURT:** Okay. You can proceed, Ms. Perez.

15 **MS. PEREZ:** Thank you, your Honor. Good morning.
16 Again, I'm Myrna Perez. I represent the Mexican American
17 Legislative Caucus and Texas NAACP, but I am here this morning
18 on behalf of all the Private Plaintiffs.

19 Quite simply, your Honor, Plaintiffs have sought and
20 continue to seek two very modest objectives: the opportunity
21 to provide reasonable input into the training and education
22 plans Texas must create and a pathway to expeditiously come to
23 the Court for resolution if there is an issue. We believe that
24 all these interests can be accomplished in the educational
25 training plan that Texas submits on the 15th, including

1 sufficient specificity in detail, and I will describe what we
2 think that specificity in detail would look like in a moment,
3 and if Plaintiffs also have a reasonable amount of time,
4 perhaps 48 hours, to make any redactions and concerns known to
5 the Court before the Court formally accepts their plan. We
6 believe that Plaintiffs' input into the plan and a mechanism to
7 ensure that Texas makes any needed modifications in response to
8 that input is absolutely necessary and was ordered by the
9 Fifth Circuit in order to ensure that the discriminatory effect
10 of SB14 is actually limited.

11 I know that I do not need to remind the Court that
12 the Fifth Circuit found that Texas's education plan for SB14 to
13 be, and I quote, "grossly insufficient," or that this Court
14 similarly found this program to be "woefully lacking."

15 Unfortunately, we're here this morning because we
16 have no indication that Texas is making improvements to its
17 prior plan. Unfortunately, we have contrary evidence. Texas
18 made it very clear in its August 5th filing that it was
19 utilizing the very same PR consultants it utilized for its
20 grossly insufficient and woefully lacking plan. Moreover, we
21 heard in our August 5th -- in the August 5th filing that Texas
22 filed that it claims to already have developed a multifaceted
23 strategy and up until this point in time it has been unwilling
24 to share sufficient details that will allow Plaintiffs to
25 assess whether the plan will be adequate or even accurate. To

1 this end, we are especially concerned because we know that
2 Texas continues to perpetuate boldly inaccurate and misleading
3 information.

4 Your Honor, we filed three short attachments last
5 night. Do you have those?

6 **THE COURT:** Yes.

7 **MS. PEREZ:** Okay. If I may ask the Court to look at
8 Attachment 1. This is the home page for votetexas.gov as of
9 yesterday. As the Court can see, on its face there have been
10 no changes as to the information being given to voters as to
11 the photo identica -- as to the photo ID required to vote in
12 November. There is no mention that the prior requirements were
13 found to be illegal, that any changes were coming soon. There
14 is absolutely nothing signaling voters to come back for more
15 information as it evolves. There's nothing suggesting that
16 SB14 is anything but the law of the land.

17 And, your Honor, if you were to look at the bottom
18 right, there's a little button that says Voter ID FAQs. Can
19 you see it, your Honor?

20 **THE COURT:** Yes.

21 **MS. PEREZ:** Okay. If you were to click on that,
22 you'd be taken to the second page of this attachment. I'll
23 give you a moment to get there, your Honor.

24 **THE COURT:** Yes.

25 **MS. PEREZ:** On this page voters are affirmatively

1 told that SB14 ID is required. Again there's no mention that
2 these requirements are being modified by Order of the Court or
3 mention to come back for more updated information.

4 I'd actually ask you to look specifically at the
5 second sentence on this page. It actually says, "While pending
6 review within the judicial system, the U.S. Supreme Court
7 issued its opinion in Shelby County v. Holder which effectively
8 ended all pending litigation." This is a flagrantly inaccurate
9 point that was out of date even before the Fifth Circuit issued
10 its decision and these are the kinds of examples that we think
11 strongly suggest that Plaintiffs need some assistance and some
12 help in developing an appropriate program.

13 I don't want to belabor this point, but if I could
14 quickly ask the Court to turn to Attachment 2.

15 Are you there, your Honor?

16 **THE COURT:** Yes.

17 **MS. PEREZ:** Okay. The first page of the attachment
18 is yesterday's home page for the Secretary of State's Election
19 Division and we have the same problem. There's nothing that
20 explains the prior law will be modified, no signal that more
21 information and details are coming. Under the photo ID button
22 on the left, on the top left, is a hyperlink for an acceptable
23 identification poster. Do you see it, your Honor?

24 **THE COURT:** I'm sorry, what was that?

25 **MS. PEREZ:** It's a notice of acceptable

1 identification poster, your Honor, with on the left under the
2 bottom that says Photo ID --

3 **THE COURT:** Oh, okay.

4 **MS. PEREZ:** -- Info.

5 **THE COURT:** Yes.

6 **MS. PEREZ:** Well, if your Honor were to click on
7 that, you'd go to the second page of this attachment.

8 **THE COURT:** Okay.

9 **MS. PEREZ:** Which again affirmatively will mislead
10 voters as to what will be required of them in November. If I
11 could ask your Honor to go back to the first page of this
12 attachment.

13 **THE COURT:** Okay.

14 **MS. PEREZ:** Do you see that there is also under the
15 first hyperlink an invitation to push a button and get
16 information as to acceptable forms of identification? If a
17 voter were to click on that hyperlink you'd get taken to the
18 third, fourth, and fifth pages of these documents, among others
19 I took from a PDF, a PowerPoint that Texas is using to educate
20 voters. And again the third, the fourth, and the fifth page of
21 this attachment has misleading information that is out of date
22 that misinforms voters as to what it is that they need.

23 And I want to be very, very clear, your Honor, we've
24 raised these concerns about these web pages expressly with the
25 State and even upon knowing this information, the inaccurate

1 information remains. This we believe, your Honor, is an
2 example of why we need help from the Court to ensure that the
3 Plaintiffs and the Court have the ability to work out the
4 specifics of Texas's plan before all the money is spent and all
5 the products are designed. This is why we need a process for
6 coming to the Court quickly for resolution.

7 I will note that initially we asked for modest
8 language from the Court ordering a meet and confer process on
9 the training and education offer, but since that point, your
10 Honor, a number of developments have occurred that I think are
11 worth pointing to the Court.

12 Most obviously, Texas has objected strenuously to the
13 language, purportedly because Texas was concerned that there
14 was not enough specificity as to its obligations under such
15 language and because Texas was worried that an ongoing and
16 continuous meet and confer process might be dilatory. We hear
17 that concern. I'd like to put a pin in that for a moment
18 because I'd like to move on to some other developments and come
19 back to that.

20 **THE COURT:** I'm sorry, you're starting to get a
21 little garbled. So I don't know, you maybe need to slow down.

22 **MS. PEREZ:** I apologize. I apologize. I will back
23 up and note that there have been a couple of developments that
24 have occurred since we proposed the language to the Court
25 earlier last week. The most obvious of these concerns is that

1 Texas has strenuously objected. It objected primarily on two
2 grounds. The first is that they were worried that the language
3 we proposed didn't have enough specifics as to what its
4 obligations under such language would be and the second was
5 that Texas was worried that an ongoing meet and confer process
6 might be dilatory. And I want to make very clear that
7 Plaintiffs hear this concern. I want to put a pin in it and
8 come back to it in a moment. But I do want to alert the Court
9 to come other developments.

10 We also provided good faith and timely input as to
11 deficiencies with the website and that has resulted in no
12 modifications to address our concerns. We also heard in
13 Texas's filing that Texas already has a detailed strategy in
14 plan for training and education that it has not shared with us
15 or with the Court. So we believe at this point in time, when
16 taking all these concerns together, Plaintiffs and Defendants'
17 concerns can be address by an order from this Court demanding
18 that Texas's plan to be submitted on the 15th be comprehensive
19 and sufficiently detailed in some very specific ways, and I
20 will lay those out in a moment, and that the Plaintiffs have a
21 reasonable amount of time to respond to these plans before the
22 Court enters any order approving them. And obviously, we'd be
23 available for hearing and discussion, if that would be helpful
24 to the Court, before ruling on the appropriateness of the plan.

25 I think the timely submission of a very comprehensive

1 and detailed plan, much more comprehensive and detailed than
2 what Texas has put forward in its filing today, (indiscernible)
3 benefit. First, it would avoid the delay of dealing with
4 piecemeal objections to particular plan performance. We
5 understand that that can be burdensome. Second, it would allow
6 each piece of the plan to be viewed as part of a large circle,
7 rather than isolation. Third, it would be nominally burdensome
8 to the State compared to other alternatives.

9 Texas purports to already have a strategy and plan
10 they will implement once a remedy is issued. If that's the
11 case, Plaintiffs request to only require the State to put those
12 plans on paper, put them on with enough detail so that
13 Plaintiffs and the Court could be alerted as to any omissions
14 in accuracy for problems and to do it with sufficient notice
15 that Plaintiffs and the Court could intervene if necessary.
16 And most importantly, this would allow for modifications to be
17 made before voters are misinformed or inaccurate products were
18 already created.

19 On this point, your Honor, would you mind looking at
20 Attachment 3?

21 **THE COURT:** Okay. I'm there.

22 **MS. PEREZ:** Great, your Honor. This is an example of
23 the kind of posters that were created in South Carolina to
24 explain the reasonable impediment alternative to their voter ID
25 law. As your Honor can see, the identification that is

1 accepted is very prominently displayed, as is the very large
2 text saying that a photo ID requirement is in place. But it's
3 only in the very small print at the bottom buried among the
4 many bullet points that a voter would learn that there is an
5 option of signing a reasonable impediment declaration if the
6 voter doesn't have one of the kinds of listed IDs.

7 This is the kind of public education mistakes that
8 have happened in other states. This is exactly the kind of
9 problem we are trying to avoid by an order from this Court
10 demanding more specificity in detail and allowing us an input.

11 Now, we have some ideas as to what details should be
12 required by the Court and on a very high level and generally
13 speaking, they're very reasonable. They would require Texas to
14 identify what documents would be updated or created. Identify
15 them, so that we know what the universe of what is being fixed
16 or modified. It would be to provide what that text purportedly
17 fixing it or modifying it is going to be and we'd like that
18 text in Spanish. Certainly your Honor remembers some of the
19 translation problems that we laid out during the trial. And
20 then we'd like to know when, where, and how those documents are
21 going to be distributed.

22 Our goal is for them to make sure that the Court and
23 the Plaintiffs have sufficient information to actually assess
24 the accuracy and effectiveness of the plan and to make sure
25 that any modifications that are needed to remedy the

1 discrimination are being able to be implemented.

2 So we do have some language suggestions and I'm going
3 to start with the training, because training is at a particular
4 moment. We know that election judges are going to be appointed
5 before the end of the month and we've heard that some counties
6 will begin training their election workers, including judges,
7 by the middle of September. An order from this Court could
8 read very simply something like Texas's submission on the 15th
9 as to training must be comprehensive and include specific
10 details, including:

11 1) A list of all the specific materials and
12 documents that will be used to train county election officials,
13 poll workers, poll watchers, and judges on the modifications to
14 SB14 and the obligations of each of these actors under any
15 interim remedy order;

16 2) Texas must submit the particular text it intends
17 to use in each of these identified documents and all of the
18 Spanish translation text required;

19 3) The specific distribution channels and timetables
20 the State intends to employ for dissemination of these training
21 documents, including when Texas intends to distribute each
22 particular training material and with whom specifically.

23 And the language would be very similar for public
24 education. An order from the Court could read something like
25 Texas's submission on the 15th must be comprehensive and

1 include specific details, including, a list of each public
2 education document or product that has been created or will be
3 created to explain to voters how SB14 has been modified and how
4 voters without SB14 can vote a regular ballot, the specific
5 text that will be used in each of these public education
6 documents and that text in Spanish, and the specific
7 distribution channels and timetables that they intend to employ
8 for dissemination of this information, including again when
9 they intend to distribute it, who specifically they intend to
10 distribute it to, and when these education texts will be
11 published or aired or made public.

12 Does the Court have handy Texas's submission from
13 August 5th? It's the Defendant's responsive position of all
14 Private Plaintiffs' and Plaintiff Intervenors' additional
15 terms?

16 **THE COURT:** Yes.

17 **MS. PEREZ:** Okay. Thank you, your Honor. If you
18 look at the bottom of Page 3, (indiscernible) Texas identifies
19 five communication channels for sharing information about
20 modifications to SB14 and the process under the interim remedy.
21 The stuff that's being requested by Plaintiffs would apply as
22 to all five of these channels and it's very obvious, it's very
23 clear what that would look like.

24 So, for example, the paid media channel for radio
25 ads, if you wanted to use that as an example, we want to see

1 the text that they're going to use in English and Spanish --

2 **THE COURT:** I'm sorry, you're starting to get a
3 little garbled.

4 **MS. PEREZ:** Sorry. We'd like to see the text that
5 they use in English and Spanish, we'd like to know which radio
6 stations they would buy these ads at and when those ads would
7 air. We simply want the opportunity to be able to point out to
8 the Court if they decide to air radio ads only at 2:00 a.m. or
9 something along that line.

10 If you look on the elected official outreach channel,
11 which is on Page 4, your Honor, we'd simply like to see the
12 text they intend to send to the elected officials regarding the
13 changes to SB14, which elected officials they were sending it
14 to, and when Texas was going to do so.

15 So in summation, we simply want the Court to order
16 that the plan Texas already has to submit on the 15th include
17 sufficient (indiscernible) consistent with what I described
18 earlier and that the Plaintiffs have a reasonable amount of
19 time, we think we could do this in about 48 hours, to make any
20 reactions or concerns known to the Court before the Court
21 formally accepts their plan.

22 And at this point, your Honor, this is all that I
23 have. I'm happy to take any questions and I really appreciate
24 the opportunity to respond to Texas on this point.

25 **THE COURT:** Okay. I'm assuming then you spoke for

1 all the Plaintiffs, correct?

2 **MS. PEREZ:** Yes, ma'am.

3 **THE COURT:** All right. Ms. Colmenero, are you taking
4 the lead or Mr. Frederick?

5 **MR. SHAPIRO:** Excuse me. This is Avner Shapiro of
6 the United States. Ms. Perez is speaking for all of the other
7 Plaintiffs, not the Government.

8 **THE COURT:** All right.

9 **MR. SHAPIRO:** And if I could just add a few --

10 **THE COURT:** Yes.

11 **MR. SHAPIRO:** -- comments, your Honor.

12 **THE COURT:** Yes.

13 **MR. SHAPIRO:** While the United States did not brief
14 this issue, we generally agree with the other Plaintiffs that
15 there needs to be some type of meaningful meet and confer terms
16 (indiscernible)

17 **THE COURT:** Okay, hold on. The recorder's not able
18 to take you.

19 **(Court confers with court recorder)**

20 Okay, maybe slow down.

21 **MR. SHAPIRO:** Sure. It's our position that such a
22 program could be accomplished through some type of a term in
23 the Order that ensures, first, that Plaintiffs can
24 expeditiously learn about the plans for an education and
25 training program; second, that Plaintiffs have an effective way

1 to provide input; and third, that Plaintiffs can seek to
2 address this Court if significant problems arise.

3 Thank you, your Honor.

4 **THE COURT:** All right. Anyone else speaking from any
5 of the Plaintiffs here?

6 **(No audible response)**

7 If not, I'm going to -- is it, Ms. Colmenero, are you
8 taking the lead or Mr. Frederick?

9 **MS. COLMENERO:** Your Honor, this is Angela Colmenero.
10 I will be responding to this point on behalf of the State
11 Defendants.

12 **THE COURT:** Okay, you can proceed.

13 **MS. COLMENERO:** Thank you.

14 Let me first start off with saying that effective and
15 meaningful voter education and election official training are
16 extremely important to the State Defendants. The only question
17 that education and training are essential during any election
18 cycles, but the State recognizes that this particular election
19 cycle is unique, given the new procedures that will be
20 implemented on this Court's forthcoming order, which include
21 the introduction of the reasonable impediment declaration in
22 the next few months before the 2016 November general election.

23 This is precisely why the Secretary of State Office
24 has developed a voter education campaign that is far more
25 expansive than anything the State has done in the past.

1 Indeed, the Secretary of State has dedicated slightly more than
2 \$2.5 million to spend in the next three months before the 2016
3 November general election.

4 **THE COURT:** So the plan is already in place? We have
5 some specifics?

6 **MS. COLMENERO:** Your Honor, the State started
7 preparing for the November general election in terms of getting
8 vendors to be the -- an engagement of the PR firm, as well as
9 the advertising firm, to help the State develop a mass media
10 campaign message to educate voters about the November -- the
11 changes that perhaps were pending in the November general
12 election. So -- and that is what the State reports in its
13 August 5th filing.

14 So while the parties have made great strides to reach
15 an agreement on the terms in the interim remedy order, the
16 State Defendants object to the language proposed by the
17 Plaintiffs regarding voter education and election worker
18 training for two reasons.

19 First, the language that the Plaintiffs put in their
20 proposed submission is vague and undefined, as we've already
21 said. They want the Court to include a requirement that the
22 parties meet and confer and allow them meaningful input into
23 what we intend to do.

24 **THE COURT:** Okay, let me just ask, because it's a
25 little confusing. I can't tell if you all have already met and

1 conferred about what specifically the Defendant State of Texas
2 here is planning to do. That wasn't clear to me. Have you
3 all --

4 **MS. PEREZ:** We have not, your Honor.

5 **THE COURT:** Okay --

6 **MS. PEREZ:** We have not. We have not seen any --

7 **THE COURT:** Wait, wait, wait, wait. Wait. I'm
8 talking to Ms. Colmenero.

9 Correct?

10 **MS. COLMENERO:** That's correct, your Honor. Let me
11 be clear. During the meet and confer process we did provide
12 the Plaintiffs with the different media channels that we
13 intended to use for the voter education campaign that we --
14 that are part of the contract that the State has with its
15 public relations firm and its advertising firm. In terms of
16 the specific complaints that the Plaintiffs have raised today,
17 that is the first time that we are hearing about that.

18 **THE COURT:** Okay, well then this doesn't work,
19 Counsel. I mean I ordered you all to meet and confer. So
20 we're just now talking about things on the day of the hearing.
21 That's not a good thing. Right?

22 **MS. PEREZ:** (Indiscernible)

23 **THE COURT:** But you can proceed, Ms. Colmenero.

24 **MS. COLMENERO:** Your Honor, if I may clarify a couple
25 of points too regarding the concerns the Plaintiffs have raised

1 regarding the website.

2 Several of those issues where they claim that there
3 were deficient notices on the website have, in fact, been
4 updated overnight. This is a fluid process the State is
5 undergoing in terms of the tax ratification elections that are
6 occurring on a weekly basis and we're trying to adjust our
7 processes and the Court has been very patient with us with the
8 entry of the Temporary Remedial Orders. And as those Orders
9 have been coming out, for example, the one last night, the
10 State was updating its website overnight, and those pages that
11 the Plaintiffs have pointed out as being deficient are, in
12 fact, now updated.

13 **THE COURT:** Okay, but that's just an example, though,
14 if you all were just to sit and visit that could probably be
15 taken care of. Right?

16 **MS. COLMENERO:** Your Honor, we agree. We would like
17 the Plaintiffs to provide us with specific issues, which we
18 have provided them, you know, what the State's plan was, but
19 this is the first time we're hearing about any type of other
20 deficiencies that are out there that perhaps the State could
21 correct.

22 **THE COURT:** Okay. What else?

23 **MS. PEREZ:** May I respond, your Honor?

24 **THE COURT:** No, not yet. It's not your turn. Right?
25 Ms. Colmenero's speaking.

1 **MS. COLMENERO:** Your Honor, may I continue?

2 **THE COURT:** Yes.

3 **MS. COLMENERO:** Okay. So as I was saying, Defendants
4 object to the inclusion of the meet and confer requirement, as
5 well as the meaningful input requirement, because the
6 Defendants want clear and definable terms in the Court's orders
7 to provide them confidence that they are, in fact, complying
8 with the Court's order.

9 **THE COURT:** But I can't do that with some vague
10 details of a possible plan or that you all might do this or
11 that and the other. I expect you all are going to have to
12 provide the Court a lot of the details that Plaintiffs are kind
13 of requesting. Right?

14 **MS. COLMENERO:** Well, and, your Honor, in terms of
15 the August 15th filing that the State is required to provide to
16 this Court, we can provide some additional specifics. But our
17 concern is that what I heard the Plaintiffs to say is that they
18 basically want us to lay out what in our mind is a three-month
19 plan for voter education and produce it to them within five
20 days.

21 **THE COURT:** But here's the problem here. What I'm
22 hearing the Plaintiffs say is "X" -- well, and this goes back
23 to the point that you all haven't sat and conferred about this.
24 Right?

25 **MS. COLMENERO:** Your Honor, the focus of the parties'

1 meet and confer, to be fair, was really focused on the
2 implementation of the reasonable impediment affidavit. The
3 parties didn't progress very far in terms of voter education,
4 given the timetables that we were faced with.

5 **THE COURT:** I know, but I think I told you all to
6 confer about everything. Right? So you all could have just
7 told the Court you know what, Court, we actually need a little
8 bit more time because we're not finished with this aspect of
9 it. Right? I've been very flexible with you guys because I
10 know you all are working hard.

11 **MS. COLMENERO:** Yes, your Honor, and we do appreciate
12 that, and the parties did not progress very far down the voter
13 education and outreach issues --

14 **THE COURT:** But it's not closed. I mean you all just
15 didn't get there because you all didn't have enough time or you
16 all didn't get there because nobody wants to get there?

17 **MS. COLMENERO:** We provided them details and we never
18 heard a response to those details. So we never heard kind of a
19 counter proposal by the Plaintiffs and so -- and that just
20 happened right before the deadline before the Court required us
21 to file the Joint Submission of Agreed Terms.

22 But I think some of the -- from the State's
23 standpoint, I think our concerns from what the Plaintiffs are
24 requesting or from what we just heard today is they're
25 essentially going to force us to take a three-month contract

1 that we have with our vendors and produce it in five days and
2 the State does need flexibility to execute our concept with our
3 vendors and we need flexibility to improve contact, because
4 it's a fluid process in terms of as how we get --

5 **THE COURT:** And I agree with that, but at some point,
6 and not just the Plaintiffs, the Court needs to know the
7 details of what you all are doing --

8 **MS. COLMENERO:** Well --

9 **THE COURT:** -- (indiscernible)

10 **MS. COLMENERO:** And, your Honor, I think what we were
11 waiting on at our end was obviously the implementation of the
12 Court's Order setting forth the interim remedies and at that
13 point we then know what message to provide to the voters.
14 Because constantly updating our website in terms of trying to
15 keep the temporary status of things, we didn't want to create
16 more confusion.

17 **THE COURT:** I understand that, but it's something
18 that we all need to sit and visit about together about what's
19 best and not just allow, you know, the State to go and do what
20 they think is right and appropriate. I mean the Court's
21 obligated to know the details, the Plaintiffs need to know the
22 details.

23 So I mean maybe what I do is I enter the joint
24 submission as an order and we continue to work on education and
25 training, which will be ongoing up until, you know, the

1 election, I'm assuming.

2 **MS. COLMENERO:** Your Honor, I think the terms set
3 forth in the Joint Submission of Agreed Terms, and specifically
4 the requirement set forth in Paragraphs 10 through 12, are
5 appropriate. The State agrees with those. And so I think the
6 process your Honor set out is something that we would be okay
7 with.

8 **THE COURT:** Okay. Anything else from the Defense at
9 this time before I let Ms. Perez respond?

10 **MS. COLMENERO:** Well, I think --

11 **THE COURT:** Let's just finish up this issue and then
12 we can move to the additional terms that the State was
13 requesting.

14 **MS. COLMENERO:** Your Honor, that's all from the State
15 Defendants at this time.

16 **THE COURT:** Okay then, Ms. Perez?

17 **MS. PEREZ:** Thank you, your Honor. I would note a
18 few things. The kind of information that Plaintiffs were given
19 looked very, very similar to the kind of bare boned
20 insufficient information that was put in front of the Court on
21 the August 5th filing. There is no mechanism for the Court or
22 the Plaintiffs to be able to assess from that what is going to
23 be -- whether or not the materials produced and accorded to
24 those five channels is accurate, done under what timetable, or
25 is going to be adequate. And it is for this reason that we

1 have been specifically requesting in advance an understanding
2 of what purportedly Texas intends to do.

3 I would encourage the Court to review this morning
4 the website that I -- that we took screen shots on yesterday.
5 I feel very confident in saying that the Court would not find
6 the modifications that have been made adequate. There are
7 couple of notations about changes that are happening in very
8 small elections involving a couple of thousand of people, but
9 even the language, when Texas was alerted about it as to, you
10 know, Shelby County abrogating all pending litigation, et
11 cetera, et cetera, has not been modified. Whatever updates
12 they made last night, after being told in many ways
13 (indiscernible) this issue has been raised before the Court, is
14 not up to task.

15 We are interested in providing our input, but we
16 believe that without the help of the Court we're constantly
17 going to be coming back to the Court saying we didn't get
18 enough details to know.

19 **THE COURT:** Well, you might be, but if you don't --

20 **MS. PEREZ:** We were not able to get that.

21 **THE COURT:** You might be going to come back to the
22 Court, but it didn't sound like you all really conferred in the
23 first place. Right?

24 **MS. PEREZ:** We certainly -- certainly we made an
25 effort to try and get the kind of info that we needed in order

1 to assess this and the information, again, your Honor, and I
2 don't want to get too close to the settlement conversations,
3 looks very, very similar to what was submitted on August 5th in
4 the filing and I hope that the Court will agree that that would
5 not be sufficient to make any sort of determination as to
6 whether or not the plan --

7 **THE COURT:** Okay --

8 **MS. PEREZ:** -- was sufficient.

9 **THE COURT:** Yeah, we're not picking you up. The
10 recorder can't -- didn't pick up whatever you said there at the
11 end.

12 **MS. PEREZ:** That (indiscernible) the information that
13 Plaintiffs have gotten thus far looks very similar to what was
14 filed in the August 5th filing, which is not sufficient to make
15 an assessment. And we would simply ask for a reasonable
16 process so the Plaintiffs have an opportunity to provide input
17 that is going to be heard and modified, again remember that we
18 have provided input with inadequate responses, and that we have
19 a very easy pathway to the Court to raise any issues, if we
20 continue (indiscernible)

21 **THE COURT:** Okay. Let me ask Ms. Colmenero this.

22 The Plaintiffs in their argument have discussed about
23 Texas submitting like a comprehensive specific plan, both in
24 terms of the education to the voters and the training for the
25 election workers. There were several things mentioned, like a

1 list of all documents that were going to be used either to
2 educate or to train, modifications regarding those documents.
3 The other one was text or I guess language that was going to be
4 used in English and Spanish. And then how these -- this
5 information was going to be distributed, both to educate the
6 voters and for training the election workers how it was going
7 to be distributed. Are there specific objections to that
8 information being provided? Because I would think -- the Court
9 is going to need that at some point to figure out, you know, is
10 this sufficient, what do we need to do. So I didn't know if
11 there was some specific objections to what the Plaintiffs are
12 requesting?

13 **MS. COLMENERO:** Well, your Honor --

14 **THE COURT:** I understand timeframe and you all may
15 still be working on things. I just need to know if there's an
16 objection to providing this sort of information.

17 **MS. COLMENERO:** Your Honor, this is Angela Colmenero
18 again. In the State's August 5th submission we set forth all
19 of the specific training materials that needed -- that will
20 need to be updated as soon as the Court enters its interim
21 order and we set forth specific timetables in terms of when
22 those updates will occur.

23 In terms of providing advance copies to the
24 Plaintiffs, our concern is that a lot of the stuff that's on
25 there are things that are typically solely within the

1 discretion of (indiscernible), such as updates to the website,
2 updates to the banners, tweets by the Secretary, tweets by
3 votetexas.gov. We don't believe that we should have to run all
4 of those types of materials by the Plaintiffs for their review
5 and approval before we take those actions in terms of getting
6 the message out, not just to the mass public, but also to the
7 election officials.

8 **THE COURT:** Okay. You're going to have to be doing
9 that, right? You're going to have to be drafting, creating
10 documents or changing, modifying things, right?

11 **MS. COLMENERO:** Yes, your Honor.

12 **THE COURT:** Why can't we all have that?

13 **MS. COLMENERO:** Yes, your Honor, we are currently
14 doing that. And specifically, everything that is listed in our
15 August 5th submission, except really for updating the handbook,
16 is going to happen within days of the Court entering its
17 interim order. The updating of the handbook, just to be clear,
18 it doesn't actually go to voters, it goes to election
19 officials, and we need --

20 **THE COURT:** No, I understand that.

21 **MS. COLMENERO:** -- time to prepare that and ensure
22 that it gives them the most accurate information, so they
23 are --

24 **THE COURT:** But that's what I said. I understand
25 there may be a time crunch. I understand you all are working

1 on things. But is there an objection to providing the
2 information that the Plaintiffs are wanting in those three
3 different areas that they've requested? Or is it just we're
4 operating fast and furious and we're trying to get this done
5 and -- I don't understand if the State of Texas has an
6 objecting to providing that sort of information.

7 **MS. COLMENERO:** Your Honor, I would also point out,
8 as an example, we have already updated the poster --

9 **THE COURT:** Okay, can I just get a yes or no? Does
10 the State of Texas object to the Plaintiffs' request that they
11 provide a comprehensive and detailed plan regarding different
12 areas, both in terms of educating the voters, training the
13 election workers, regarding which documents are going to be
14 created, which are going to be modified or changed, what's
15 going to be changed, how is it going to be distributed? Is
16 there an objection to providing that sort of information?

17 **MS. COLMENERO:** Your Honor, the State of Texas does
18 not object to providing a comprehensive and detailed plan to
19 the Court. I think where our concern is, is providing that
20 comprehensive and detailed plan to the Plaintiffs may inject a
21 delay into the process when we have to be --

22 **THE COURT:** Okay, but I'm trying to work with you on
23 that. My first question, okay, it doesn't sound like there's
24 an objection to providing this sort of information, which the
25 Court is going to need anyway to approve, right? Okay. So

1 then the second thing is how are you going to do it and that's
2 what you all are going to confer about, how is the State going
3 to do that, what's reasonable for the State to provide this
4 sort of information. Right? I mean am I missing something
5 here?

6 **MS. COLMENERO:** No, your Honor, and I apologize if
7 I'm not being as clear as possible.

8 **THE COURT:** I understand you're in a difficult
9 situation trying to get this education done, training, we're
10 operating on a short timeframe here. I get all that. But
11 we've got -- the very basic -- they want certain information.
12 Is that objected to? It doesn't sound like it. So then how
13 are we going to do it? What's going to happen? Right? And I
14 think you all can confer about that and if you have issues, you
15 know, then maybe I step in.

16 But I couldn't tell from reviewing this whether both
17 sides refused to confer about this, whether there had been some
18 conferring done, what had been discussed, whether any specifics
19 had been done. From the plan submitted or the information
20 submitted by the State, you know, it was like we will do this,
21 we can do this. So I don't know, are they going to do it,
22 what's going to happen, how? It was a little vague all around
23 on this end.

24 **MS. COLMENERO:** Your Honor, I have a proposal I think
25 that may address your question.

1 **THE COURT:** Okay.

2 **MS. COLMENERO:** I think from the State Defendants'
3 perspective, we would ask the Court to enter the agreed
4 submission of terms and would specifically keep the language of
5 Paragraphs 10 through 12, and as set forth in the Court's soon
6 to be issued order, the State Defendants will have to submit a
7 comprehensive plan. Given the short timeframe the parties are
8 working under, the State is fine with going back and conferring
9 with the Plaintiffs over some of those aspects, because I don't
10 think the parties fully completed that conferral process
11 regarding voter education and outreach, given the impending
12 deadline. And at that time we can provide some additional
13 details and perhaps address some of the Plaintiffs' concerns
14 and if there is still some disagreement among the parties, then
15 the parties could come back to the Court and we could use your
16 intervention and address that concern.

17 **THE COURT:** Okay. So when are you all going to
18 confer and when am I going to know what has happened here or
19 how that has gone?

20 **MS. COLMENERO:** You're asking when are we going to
21 confer? We can confer as soon as possible. We have already --
22 I mean we've laid out our concerns in the August 5th submission
23 and so I think the parties can work on that in this interim
24 conference.

25 **THE COURT:** Well, how about if I set a status hearing

1 for 2:00 o'clock on Friday afternoon?

2 **MS. COLMENERO:** Yes. And your Honor, I think it
3 would be helpful if the Court issued an order on the agreed
4 submission --

5 **THE COURT:** Yeah, I don't mind doing that. Any issue
6 with that from the Plaintiffs' side, Ms. Perez or Mr. Shapiro?

7 **MS. PEREZ:** No, that's fine, your Honor.

8 **MR. SHAPIRO:** No, your Honor.

9 **MS. PEREZ:** Again, we simply -- we just simply want
10 to see what they're going to go and to be able to weigh in --

11 **THE COURT:** Right, and --

12 **MS. PEREZ:** -- and (indiscernible)

13 **THE COURT:** Right, and they need to get that order
14 from the Court before they can be definite, instead of feeling
15 like, well, we start putting out information, then we're going
16 to have to change it. So I will enter the agreed submission,
17 I'll enter an order on the agreed submission, and then you all
18 are going to confer. We're going to have a status hearing at
19 2:00 o'clock on Friday, correct?

20 Now, this deadline of August 15th, what is that for
21 exactly?

22 **MS. COLMENERO:** Your Honor, as set forth in the
23 agreed terms by the parties, that is for the State to submit a
24 plan for the training of election officials, as well as a plan
25 for the education of voters.

1 **THE COURT:** Okay. So what else do we need to address
2 this morning from the Plaintiff, Ms. Perez, Plaintiffs?

3 **MS. PEREZ:** My colleague, Chad Dunn, is
4 (indiscernible) other issues, your Honor.

5 **THE COURT:** I'm sorry, what did you say?

6 **MS. PEREZ:** Chad Dunn (indiscernible) other issues,
7 your Honor.

8 **THE COURT:** Okay. So nothing more --

9 **UNIDENTIFIED SPEAKER:** (Indiscernible)

10 **THE COURT:** Those are the additional requests by the
11 State, correct? Is that where we're going now?

12 **MR. DUNN:** I believe that's what's left to resolve,
13 yes, Judge.

14 **THE COURT:** Okay. Then Mr. Dunn, do you want to
15 proceed on -- well, actually it was the State's request, so let
16 me allow Ms. Colmenero to address those and let me get there.

17 **MR. FREDERICK:** Your Honor, this is Matt Frederick.
18 I will be addressing those additional points for the State.

19 **THE COURT:** Okay. Give me one second.

20 **MR. FREDERICK:** Sure.

21 **(Pause)**

22 **THE COURT:** Okay, you can proceed, Mr. Frederick.

23 **MR. FREDERICK:** Thank you.

24 Your Honor, the State is requesting three modest
25 adjustments to the agreed terms. We believe each one is

1 consistent with what the parties have already discussed and
2 also consistent with this Court's Order and the Order of the
3 Fifth Circuit.

4 The first is language regarding future legislative
5 action. The Fifth Circuit obviously contemplated a Court
6 ordered interim remedy for the November 16th, 2016 election.
7 And while in theory the Legislature could meet in a special
8 session, but as a practical matter it is very difficult, if not
9 impossible, for the Legislature to provide any remedy for the
10 upcoming election. I think that the Fifth Circuit recognized
11 that. However, the Fifth Circuit's Order expressly
12 contemplated future legislative action and instructed this
13 Court that in considering the claim of discriminatory purpose
14 going forward the Court should not consider any new evidence,
15 except the Fifth Circuit expressly provided that the Court
16 should consider any action that the Legislature should take.
17 We think it is important to recognize that in the -- in any
18 interim remedy, that this is something that remains within the
19 competence of the Legislature to address and that they may do
20 that in the upcoming regular session.

21 The second point is a slight modification to language
22 in the reasonable impediment declaration. We -- basically the
23 State believes that it makes sense to make explicit what we
24 believe is already implicit in the reasonable impediment
25 declaration, which, as the Court provided in its Order of

1 July 21st, is that all persons who have an SB14 ID or who have
2 the means to get it in time for the 2016 election must display
3 that ID in order to vote. It's important to be very clear on
4 that point to avoid voter confusion, because we've been
5 talking -- because the scope of any education and training that
6 has to occur is not limited to people who don't already have
7 the ID. It's important to make clear to people who do have it
8 that certain aspects of SB14 still remain in place. We don't
9 want confusion where people think that if they have an ID they
10 don't have to show it. And we think that is completely
11 consistent with the parties' understanding of what is required
12 for a voter to be eligible to sign the reasonable impediment
13 affidavit or declaration, but we just want to make very clear
14 to the voters that that's still required if they have it or are
15 able to get it.

16 Finally, the third issue is the language regarding
17 preservation of the parties' rights. That's pretty self-
18 explanatory. We just want --

19 **THE COURT:** Hold on. All of a sudden you kind of
20 sound like you're far away.

21 **MR. FREDERICK:** Oh. I apologize. We just want the
22 order to be clear that the parties, that all of the parties
23 preserve their rights. We believe that's implicit, we only
24 want to make it explicit.

25 And those are the only three issues.

1 **THE COURT:** So it's not necessary, but it will make
2 you feel better. Right?

3 **MR. FREDERICK:** Well, we --

4 **THE COURT:** No, I'm not arguing. I don't really have
5 a problem with that. I'll hear from the Plaintiffs. I'm just
6 saying I don't think it's necessary, but if that's going to
7 make you all feel better and there's no objection to it, I'll
8 be fine with it.

9 **MR. FREDERICK:** Okay. Well, and to respond to that,
10 if the parties all agree that that is part of the terms, then
11 that's fine. We just want it made clear and if everybody
12 agrees, that's okay with the State.

13 **THE COURT:** I mean that's the way I see it.

14 **MR. FREDERICK:** Okay.

15 **THE COURT:** But anyway, okay, so those are your three
16 points and Mr. Dunn for the Private Plaintiffs and Plaintiff
17 Intervenors, and then I'll hear from Mr. Shapiro.

18 **MR. DUNN:** Yes, this is Chad Dunn on behalf of the
19 Private Plaintiffs, for the record.

20 So without patting ourselves too much on the back, I
21 do want to just go back and explain to the Court what I think
22 was near close to a miracle that happened here in terms of the
23 parties agreeing to the provisions in the agreed submission and
24 the reasonable impediment declaration. The process, the
25 instructions, I think the Court's already alluded to. There

1 were 18/24 hour a day negotiations over this, starting with the
2 House District 120 election, moving through the tax election
3 through the course of working out this agreement by November.
4 And as the Court, without prejudicing any settlement
5 discussions, as the Court is aware from, you know, ample
6 experience in other legal arenas, people started in different
7 positions and gave up on certain things as they went through
8 the process. And I know that's true of the Plaintiffs. I'm
9 sure that's true of the State.

10 So at the outset there was obvious attention and
11 focus on exactly what the language would be in this
12 declaration. In fact, I'll go as far as to say that's probably
13 the most critical issue that the parties had to come together
14 and touch hands on. And we did that. It wasn't until this
15 agreement on the declaration was reached that we did learn that
16 the State wanted to add a sentence to it that, frankly, upsets
17 the entire balance of the agreement.

18 So we will start with that request and then I'll
19 transition to the request which, frankly, I believe is in
20 balance with the legislative request, albeit I do think the
21 Court ought to deny it. So starting first with the language in
22 the affidavit. Number one, this thin film of an agreement was
23 hammered together by the parties in painstaking effort and the
24 effort for one party to come in now and ask for additional
25 items threatens the deal to fall apart altogether. And

1 certainly there are things that the Plaintiffs desire to have
2 in this agreement that aren't there and I'm sure there are
3 provisions the State would like to have in this agreement that
4 aren't there. But on this point, it wasn't an issue
5 specifically reserved. For example, on the training and
6 education it was known from the beginning, it was made clear in
7 the communications that were already written that the
8 Plaintiffs were reserving that issue. On the legislative, the
9 State made it clear that it continued to want legislative
10 language. There wasn't any surprise that those issues were
11 going to go to the Court. But to insert a term like this in
12 what is the fundamental centerpiece of the remedy is not some
13 place we think the Court ought to go.

14 But even if it were, even if the rules of fairness
15 and fair play and negotiation and (indiscernible) were in play,
16 it also isn't a solution that makes sense. First, it isn't
17 done in any other similar type affidavit or process used in
18 voting. The Court might recall a substantially similar named
19 affidavit process which was developed after Senate Bill 14 was
20 implemented. It doesn't involve such high level perjury,
21 statutory citation, legal jargon (indiscernible). There isn't
22 any legislative history to support the requirement of such
23 language. So it's not anything that the State can come to the
24 Court or us and say, look, the Legislature has shown a policy
25 preference to use language such as this. In fact, the opposite

1 is true.

2 But in addition, the language is unnecessary, because
3 the agreed terms in the declaration already provide the voter
4 is affirming, both in the oral communications with the poll
5 worker and then later in the signature on the reasonable
6 impediment declaration, that they have a reasonable impediment
7 or difficulty that prevents them from getting an acceptable
8 form of photo identification. So the additional language
9 doesn't add anything more except, we think, the Plaintiffs, at
10 least the Private Plaintiffs think, except a thinly veiled
11 opportunity for the State to confuse, intimidate, and perhaps
12 after the election harass voters, despite the clear terms in
13 the agreement that say voters' justifications for not having a
14 Senate Bill 14 ID can be challenged.

15 In addition to those points, the notion that
16 individual voters can be subjected to perjury charges,
17 something made exclusive in a last minute (indiscernible),
18 serves no purpose whatsoever other than to discourage
19 individuals from employing what the Fifth Circuit en banc has
20 determined is their right, which is to use the declaration or
21 to have some process to avoid the onerous and unnecessary
22 burdens of Senate Bill 14.

23 And then finally, the language, because it hasn't
24 been negotiated by the parties, clearly only deals with what
25 the State is concerned (indiscernible) and doesn't deal at all

1 with what the Plaintiffs believe are important interests to the
2 voters and certainly what this Court and the Fifth Circuit
3 found are important interests to the voters. Which is why
4 (indiscernible) language should remain as it is.

5 So now I'll turn to the legislative issue. There --
6 again going back to the point, there's a lot of things that the
7 Plaintiffs and I assume the State would also like to add to the
8 Court's order. And certainly I don't think it would be out of
9 bounds for the Plaintiffs to ask the Court to put some language
10 in the order that all of these provisions are subject to future
11 revision in the event the intent finding is reaffirmed by this
12 Court and is affirmed (indiscernible) if an appeal is proceeded
13 with. And certainly a finding of intent would adjust what was
14 necessary by terms of remedy. In fact, the U.S. Supreme Court
15 has said an intentionally discriminatorily adopted law is
16 entitled to no deference whatsoever.

17 So we could be asking the Court to expand on that.
18 Those are reasonable legal terms and certainly things supported
19 by the Fifth Circuit's en banc opinion. But it's also not
20 necessary for the purposes of putting in place an interim
21 remedy.

22 And the trouble with the State's language on the
23 legislature is that it's asking the Court to step into
24 (indiscernible) not required at this point, to do so in a way
25 that weighs in the State's favor and the State's interpretation

1 of the legislative role moving forward. And whatever the Court
2 does potentially upsets the already existing language on the
3 legislative issue in the en banc Fifth Circuit opinion. And as
4 the State notes, the en banc Fifth Circuit opinion references
5 that the Legislature has a role to play here and makes note
6 that the Legislature's official role shouldn't be upset by the
7 court proceedings, except to the extent required by federal
8 law. And nothing more needs to be said on it at this point and
9 doing so merely is an attempt to resolve future issues in the
10 State's favor now.

11 So those two issues we think the Court ought to deny
12 and not include in the order. And then the third and final
13 issue, which, you know, we have been clear (indiscernible)
14 orders, you know every party is preserving its position
15 (indiscernible) and certainly the Plaintiffs are preserving its
16 position on intent, the State is preserving its position if it
17 wants to appeal, except insofar as it's agreed to these terms.
18 And so we think that exists, but we don't, you know,
19 necessarily oppose some sentence or footnote in the order that
20 recognizes that each party is preserving their rights to
21 appeal, except insofar as they've agreed to these terms.

22 So that concludes my argument.

23 **THE COURT:** All right, thank you.

24 Mr. Shapiro?

25 **MR. SHAPIRO:** Yes, your Honor. The United States

1 generally concurs with the positions taken and arguments
2 expressed by Mr. Dunn and we are definitely satisfied that we
3 can rest on our submission on the issues.

4 Thank you, your Honor.

5 **THE COURT:** All right, thank you.

6 Mr. Frederick?

7 **MR. FREDERICK:** Yes, your Honor.

8 **THE COURT:** If you want to respond.

9 **MR. FREDERICK:** I would like to, thank you.

10 First, I want to say on behalf of the State, we
11 object to the allegation that we are trying to harass,
12 intimidate, or discourage any voters. That is absolutely
13 inaccurate. I object to that statement. The State has made
14 extraordinary effort to address the issues raised by the Fifth
15 Circuit's decision. So --

16 **THE COURT:** And I agree and like I said earlier, and
17 I wasn't just saying that, I sincerely appreciate and thank you
18 all, both sides, everyone involved, for all the work and effort
19 you all have put into this. It's been beautiful.

20 You can proceed.

21 **MR. FREDERICK:** Thank you, your Honor.

22 Specifically on the proposed language in the
23 declaration, the notion that this has not been discussed or
24 that this has somehow been raised at a late hour is simply not
25 accurate. This issue about the obligation of a voter who has

1 or can get an SB14 ID, this was raised expressly by the Court
2 in its Order on July 21st. It was discussed early on by the
3 parties. And we believe that it is agreed in substance by the
4 parties. In fact, Mr. Rosenberg was on NPR this morning saying
5 that under the parties' jointly agreed terms what the voter
6 must do is swear that they do not have an SB14 ID. So we don't
7 think this is anything new, but we do think it is important to
8 avoid any possibility of confusion to make this term clear to
9 voters.

10 It's also important when the State goes out to try to
11 educate voters and educate poll workers that we know exactly
12 what we can tell them. We don't want there to be any confusion
13 or any suggestion, as there has been this morning, that by
14 making clear the terms of what the Court has already
15 contemplated as part of interim relief that we are somehow
16 trying to intimidate voters.

17 So that is why we're asking for it and that is why we
18 believe that it is completely consistent with what this Court
19 has said and what the parties have agreed.

20 Turning to the legislative language, again this is
21 consistent with basic constitutional structure and consistent
22 with what the Supreme Court has always said in election law
23 cases, which is that the Legislature has the prerogative to
24 establish election law and it should have the first
25 opportunity, whenever possible, to fashion a remedy or modify

1 its election laws. We think that this is -- all we want to do
2 is make that clear. We think that's consistent with what the
3 Fifth Circuit has said.

4 With respect to the specific proposal, our intention
5 is just to be accurate. And I understand that the Plaintiffs
6 don't, probably don't like a lot of the language. I would make
7 this suggestion. We proposed two paragraphs. The first
8 included several citations to Supreme Court opinions. I think
9 the State's purpose would be served if we just had a shorter
10 second paragraph that recites what we see as completely
11 accurate facts and just acknowledges, as the Fifth Circuit did,
12 that the Legislature still retains the ability to address this
13 if it chooses to do so.

14 To that point, the Department of Justice, in
15 responding to our proposal for the legislative language, they
16 proposed some additional terms. You know, to the extent that
17 this Court in its interim order chooses to cite any authority,
18 as we had proposed in the first additional legislative
19 paragraph, we feel it would be entirely fair and accurate to
20 add the DOJ's proposed language. However, again, we think that
21 all the parties' purposes would be served if we just included
22 the second very short paragraph.

23 And that concludes my argument on that point.

24 **THE COURT:** All right, thank you.

25 Anything else on the additional terms then requested

1 by the Defense?

2 **MR. ROSENBERG:** Your Honor, this is Ezra Rosenberg,
3 just because -- if I may, just respond to Mr. Frederick's
4 having taken -- alluded to a quote that appears from me today.
5 That quote was out of the full context of discussing that the
6 language should not be intimidating or threatening and it
7 should be according to the best of the knowledge of the
8 Plaintiffs. And so it is a partial statement from a longer
9 interview, for what it's worth.

10 **THE COURT:** All right. Honestly, this Court agrees
11 that this Court should and will defer to the Legislature first,
12 that the State of Texas should have the first opportunity to
13 devise any remedies. With that being said, I don't know that
14 the additional language is required or that it's necessary.
15 And once I start going there, then I have to include language
16 that the Plaintiff thinks appropriate to kind of counter and
17 then we could go on, when that's not the focus of what we're
18 trying to do here and I don't think it's necessary. I mean the
19 law is the law and that's what it is.

20 So that request for the additional legislative
21 language under Number 1 is denied. The Court is going to deny
22 the request for the additional language on the impediment
23 declaration. And then, although I said earlier I don't think
24 it's required, but there doesn't seem to be an issue with the
25 third request, the language regarding the preservation of

1 rights and not waiving any arguments regarding matters, I'll
2 include that in there.

3 Is there anything else on these additional requests?

4 **MR. FREDERICK:** Nothing from the State, your Honor.
5 Thank you.

6 **THE COURT:** Okay. From the Plaintiffs?

7 **MR. SHAPIRO:** Nothing from the United States,
8 your Honor.

9 **THE COURT:** Okay. So let me just see where we are.
10 The Court's going to enter an order regarding the agreed
11 submission. You all are going to provide me with a revised
12 declaration, correct?

13 **MS. COLMENERO:** That is correct, your Honor.

14 **THE COURT:** Okay. Then you all are going to meet and
15 confer regarding the education and training information and we
16 will meet for a conference at 2:00 p.m. on Friday afternoon.

17 And is there anything else from the Plaintiff?

18 **MR. ROSENBERG:** Your Honor, Ezra Rosenberg again.
19 Good morning. We did want to raise one issue on behalf of the
20 Private Plaintiffs. The Fifth Circuit directed after making
21 the interim relief determination the Court is supposed to
22 revisit and reevaluate the evidence pertaining to intent. From
23 the Private Plaintiffs' perspective, we believe it's important
24 for this determination to occur prior to legislative action for
25 the reasons that Mr. Dunn has already alluded to. And we would

1 like to propose that the parties, in addition to meeting and
2 conferring on the development of the training and education
3 plans, also meet and confer over the same time period as to a
4 joint schedule, which may include findings of fact and
5 conclusions of law and briefing, leading up to a hearing and
6 then decision on the issue of intentional discrimination.

7 As the Court is aware, there are caveats in the Fifth
8 Circuit's opinion that the Court is encouraged not to make the
9 actual determination prior to election day and in any event not
10 to implement that determination until after election day. But
11 we think that it's important for the process to begin, so we'd
12 like to meet and propose a joint schedule, and if we can't,
13 submit competing schedules to your Honor.

14 **THE COURT:** Yeah, but let me recommend this. Let's
15 finish this, you know, I'm saying we have a status conference
16 on Friday at 2:00, we'll see where we are and then we can
17 address that.

18 Now, there has also been pending for a very long time
19 the Plaintiffs' motion for the expert witnesses' expenses.
20 There was briefing, full briefing on that from both sides. So
21 if there's not going to be anything further on that, I will try
22 to make a ruling on that soon. But if there is, let Brandy
23 know that you all intend to maybe provide some additional
24 information or briefing. If not, I'm just going to go forward
25 on that as soon as I can.

1 So you are excused then and I will --

2 **MS. COLMENERO:** Your Honor?

3 **THE COURT:** Yes.

4 **MS. COLMENERO:** Your Honor, this is Angela Colmenero.
5 I have one housekeeping matter I wanted to --

6 **THE COURT:** Yes.

7 **MS. COLMENERO:** -- place before the Court.

8 **THE COURT:** Okay.

9 **MS. COLMENERO:** Yesterday the parties filed a joint
10 motion for entry of a temporary remedial order to address
11 certain tax ratifications.

12 **THE COURT:** Right.

13 **MS. COLMENERO:** And there was a slight error in that
14 filing. We had indicated that Caldwell Independent School
15 District in Burleson County was holding a tax ratification
16 election. We have since learned that is not correct. It's
17 actually Snook ISD. That's S-n-o-o-k ISD. And consistent with
18 the Court's Order issued yesterday, we have already alerted the
19 appropriate election officials and they are prepared to
20 implement the reasonable impediment declaration. But I just --
21 I wanted to alert the Court that there was just that issue with
22 the Order issued yesterday.

23 **THE COURT:** Okay. Do we need to do an amended order
24 or anything?

25 **MS. COLMENERO:** I don't believe so, because there was

1 language in the Court's Order that said if there were any
2 additional school districts that were subsequently --

3 **THE COURT:** Okay.

4 **MS. COLMENERO:** -- learned of, then we would alert
5 them.

6 **THE COURT:** All right. Anything from the Plaintiffs
7 on that?

8 **(No audible response)**

9 No. So if nothing else then, I'm going to excuse you
10 and then we'll just visit on Friday afternoon.

11 **MS. COLMENERO:** Thank you, your Honor.

12 **THE COURT:** Thank you. You're excused.

13 **(Counsel thank the Court)**

14 **(This proceeding was adjourned at 9:40 a.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in black ink, appearing to read "Toni Hudson", is written over a horizontal line.

Signed

August 15, 2016

Dated

TONI HUDSON, TRANSCRIBER